

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

28663

FILE: B-214946.2

DATE: June 28, 1984

MATTER OF: Cal Pacific Fabricating, Inc.--Request for
Reconsideration

DIGEST:

Protester requesting reconsideration of a GAO decision must present a detailed statement of the factual and legal grounds warranting reversal or modification and specify any errors of law or information not previously considered. When documents enclosed with a request for reconsideration pre-date the protest and reflect only actions that the protester initially complained of and that GAO already has found proper, the request for reconsideration will be denied.

Cal Pacific Fabricating, Inc. requests reconsideration of our dismissal of a protest against award of a contract for construction of expandable containers under a solicitation issued by Warner Robins Air Logistics Center, Georgia. After Cal Pacific had twice been denied a certificate of competency, the Air Force made award to another offeror, refusing to request the Small Business Administration to consider later-submitted evidence of Cal Pacific's financial resources.

We deny the request for reconsideration.

The protester implies that in our dismissal, Cal Pacific Fabricating, Inc., B-214946, May 22, 1984, 84-1 CPD ¶ ___, we misunderstood its basis of protest. Cal Pacific states that it was not complaining of the SBA's refusal to issue the certificate of competency, a matter that our Office generally does not review. Rather, Cal Pacific asserts, its protest was against the Air Force and the actions of the contracting officer, which it characterizes as intentional and malicious, and thus evidence of bad faith that would invoke our review.

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We did not misunderstand the basis of protest. The first paragraph of our May 22 decision sets forth Cal Pacific's allegation that the contracting officer improperly influenced SBA and caused it to deny the certificate of competency. Because, however, we found that Cal Pacific had not established the possibility of bad faith on the part of the contracting officer, we declined to review SBA's otherwise final determination that Cal Pacific was nonresponsible.

In our decision, we specifically found that the contracting officer's actions were in accord with applicable regulations. For example, Cal Pacific alleged that the contracting officer, through telephone calls and letters, had urged SBA to accept his determination that Cal Pacific was not financially capable of performing the contract. We pointed out that procuring activities are required to maintain close liaison with SBA, to endeavor to reach agreement with SBA, and to provide SBA with their views, including copies of preaward surveys and other documents supporting the nonresponsibility determination. The fact that the views of the contracting officer were negative in this case does not change his obligation to communicate them, or show that he acted in bad faith.

We also found that the contracting officer was not required to give Cal Pacific an opportunity to submit additional information concerning its financial resources. Rather, if a small business wishes to avail itself of the protections afforded by the Small Business Act against allegedly improper actions of contracting officials, it must submit full and complete information with its initial application for a certificate of competency. In such a situation, a contracting officer need only withhold award for 15 days following SBA's receipt of a nonresponsibility determination.

As our decision pointed out, in Cal Pacific's case, the contracting officer withheld award for 6 months (September 1983 through March 1984). The SBA denied the certificate of competency on December 8, 1983; the file was subsequently reopened and reviewed, and SBA again denied the certificate of competency on January 10, 1984. As a result of intervention on Cal Pacific's behalf by a California Senator and by a member of the House of Representatives, the Director of SBA's Office of Industrial Assistance indicated that SBA would consider more recent

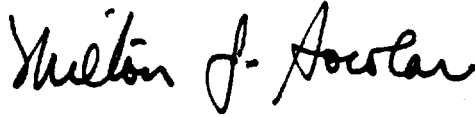
information on Cal Pacific's financial resources (apparently a letter dated March 7, 1984, guaranteeing Cal Pacific a \$3.5 million line of credit) if the Air Force so requested. The contracting officer, however, refused to make such a request. Since the contracting officer obviously had exceeded the 15-day time for withholding award, we held that this refusal did not constitute evidence of possible bad faith.

In requesting reconsideration, protesters are required to present a detailed statement of the factual and legal grounds warranting reversal or modification of a decision and to specify any errors of law or information not previously considered by our Office. 4 C.F.R. § 21.9 (1984). We have held that information not previously considered means information not previously available to the protester (for example, additional facts obtained under a Freedom of Information Act request). Any other interpretation would permit a protester to present information in a piecemeal fashion and to disrupt procurement of necessary goods or services for an indefinite time. B&M Marine Repairs, Inc.--Request for Reconsideration, B-202966.2, Feb. 16, 1982, 82-1 CPD ¶ 131.

The documents enclosed with Cal Pacific's request for reconsideration, which purportedly support the allegations of bad faith on the part of the contracting officer, all pre-date the initial protest. They consist mainly of correspondence addressed to, with copies to, or written by Cal Pacific. We therefore cannot conclude that the information in them was not previously available to Cal Pacific.

In any event, these documents reflect only actions of the contracting officer that Cal Pacific already had complained of and that we already have found proper. When a protester merely reiterates the arguments made in its initial protest, disagreeing with our decision without specifying any errors of law or fact, we will not consider the matter further. Schultes Level, Inc., B-213014.2, Feb. 27, 1984, 84-1 CPD ¶ 237.

The request for reconsideration is denied.


for Comptroller General
of the United States